CHAPTER 1
GENERAL

1-1. Introduction.

a. The OE response process is designed to enhance public safety and protect the human environment from OE remaining from past DOD operations. The typical strategies for addressing the presence of OE on a site are physical removals and institutional controls. Although physical removals are conducted to reduce the amount of OE at a site, current technologies are not adequate to provide for the detection and removal of all ordnance. Therefore, institutional controls are implemented to manage residual risk remaining at an OE site. Institutional controls are also sometimes put into place without a physical removal, as a stand-alone response.

b. Risk from OE can be managed if the public is informed about the hazards, is willing to take reasonable precautions, and is willing to alter their behaviors. This document will focus on how institutional controls may be used to successfully manage OE risk. This document will emphasize the importance of encouraging meaningful stakeholder participation, supporting community needs and fostering long-term community commitment during the development, implementation and maintenance of institutional controls.

1-2. Policy. The policy of the USACE is to establish and maintain institutional controls in a manner which fully meet customers' expectations of quality, timeliness, and cost effectiveness within the bounds of legal responsibility. An acceptable level of quality does not imply perfection; however, there should be no compromise of functional, health, or safety requirements. Adherence to the Quality Management principles outlined in Engineer Regulation (ER) 5-1-11, Program and Project Management and ER 1110-1-12, Quality Management, will contribute to achieving this goal. OE response procedures must be formulated to ensure harmony with the USACE Strategic Vision and should be executed in concert with activities presented in other USACE guidance.

1-3. Regulatory Authorities.

a. Major Subordinate Commands (MSC), district commands, OE Design Centers, and the OE Mandatory Center of Expertise (MCX) will comply with all applicable laws and regulations. The district, which serves as the Project Manager (PM), will provide general legal services. For Formerly Used Defense Sites (FUDS) projects, the determination of the laws and regulations governing environmental aspects for any specific OE project will be made in consultation with the OC supporting the OE MCX. In the event of any sort of dispute with a regulator over the governing laws on a FUDS project, the district providing general legal services will represent the agency in negotiations or adversary

proceedings. For non-FUDS projects performed by the USACE under a different program or authority (i.e., Base Realignment and Closure [BRAC], Installation Restoration [IR], Work for Others), the appropriate legal representative of the sponsoring agency will be the lead counsel for all legal matters, although USACE counsel will be available for consultation.

b. OE response actions will be executed in compliance with the OE requirements of Department of Defense (DOD) 6055.9-STD; Army Regulation (AR) 385-61; AR 385-64; Department of the Army Pamphlet (DA Pam) 385-61; Headquarters, Department of the Army (HQDA) LTR 385-98-1 "Explosives Safety Policy for Real Property Containing Conventional Ordnance and Explosives"; ER 1110-1-8153 "Ordnance and Explosives Response"; "Safety and Health Requirements for Ordnance and Explosives Response Actions" to be published in ER 385-1-95; and any other applicable OE publications listed at Appendix A. All USACE elements will comply with DOD and DA safety and health regulations and procedures.

c. The regulatory authorities governing the establishment and maintenance of institutional controls during OE response actions include: Comprehensive Environmental Response, Compensation and Liability Act (CERCLA); National Oil and Hazardous Substance Contingency Plan (NCP); Defense Environmental Restoration Program (DERP); BRAC; Resource Conservation and Recovery Act (RCRA); and 40 CFR Part 260 et al - Military Munitions Rule. These regulatory authorities are discussed in detail in Engineer Pamphlet (EP) 1110-1-18, Ordnance and Explosives Response. Since the BRAC process has dealt with issues of transferring or leasing land that may contain residual OE contamination, Appendix B provides a general overview of the BRAC process. It is necessary to have a basic understanding of this process in order to understand the scope of institutional controls that may be used at transferring or transferred military properties.

1-4. Responsibilities. It is the responsibility of all USACE personnel involved with the OE Program to safely execute OE response projects and to comply with applicable laws, regulations, and policies. A detailed discussion of USACE organizational responsibilities for OE response projects is presented in Engineer Regulation (ER) 1110-1-8153, Ordnance and Explosives Response.

1-5. Functional Roles. The following section provides a description of the functional roles for USACE elements regarding the establishment and maintenance of institutional controls during OE response projects. A more comprehensive description of the functional roles for the organizations during OE response projects discussed below is provided in ER 1110-1-8153.

a. Headquarters, US Army Corps of Engineers. HQUSACE is responsible for monitoring the Engineering Evaluation and Cost Analysis (EE/CA) report, a component of which is the Institutional Control Plan. In the Institutional Control Plan, the establishment and maintenance of institutional controls for a specific site are discussed.

b. Major Subordinate Commands. In addition to the requirements stated in ER 1110-1-8153, MSCs will perform the below listed functions pertaining to the establishment of institutional controls. These responsibilities may be delegated to assigned districts within a MSC's geographic area.

(1) Establish contact with zoning and permitting authorities;

(2) Coordinate with local authorities; and

(3) Coordinate maintenance inspections, including recurring reviews.

c. District. A district will perform those activities for institutional controls that are delegated to it by the MSC.

d. OE Design Center. The OE Design Center will provide direct support to the MSCs and districts, as requested, for establishing and maintaining institutional controls.

e. OE MCX. The OE MCX will:

(1) Review and provide comments and written concurrence or non-concurrence on products related to institutional controls (e.g., Statement of Work, Work Plan, and Institutional Analysis, Institutional Controls Plan) to ensure compliance with Federal, DOD, DA and USACE OE safety and OE environmental regulations.

(2) Provide technical support to any USACE office conducting institutional controls activities in areas where unexploded ordnance (UXO) is suspected or known to exist.

f. State, Local, and/or Tribal Governments/Authorities. State, local, and/or tribal governments/authorities are critical to the development and selection of site-specific institutional controls in concert with USACE.

g. Regulators. Regulators provide advice and assistance to the USACE and state, local, and/or tribal governments in the development of a viable institutional control program for a particular site. Once an institutional control alternative has been selected for a site, regulators will provide oversight to ensure continued compliance with the institutional control.

h. Landowners. Landowners provide critical input into the development of a viable institutional control program for their property. If an institutional control program is selected for their property, the property owner will maintain compliance with the provisions of the institutional control and notify the USACE and the appropriate, state, local, and/or tribal government with any proposed land use changes for the site that may impact the effectiveness of the institutional control.